

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Latrice Frazier	Team: Squad #1	CCRB Case #: 201907191	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 03/23/2019 8:30 PM	Location of Incident: [REDACTED]	Precinct: 101	18 Mo. SOL 9/23/2020	EO SOL 5/10/2021	
Date/Time CV Reported Tue, 08/13/2019 4:46 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 08/13/2019 4:46 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael McCarthy	19917	950855	101 PCT
2. POM Nicholas Velotti	09432	949767	101 PCT
3. POM Adam Gledhill	30941	954156	101 PCT
4. POM Jay Poggi	22681	953259	101 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. LT Brian Padovani	00000	944872	101 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael McCarthy	Force: Police Officer Michael McCarthy pointed his gun at § 87(2)(b) [REDACTED]	[REDACTED]
B.POM Nicholas Velotti	Force: Police Officer Nicholas Velotti pointed his gun at § 87(2)(b) [REDACTED]	[REDACTED]
C.POM Nicholas Velotti	Abuse: Police Officer Nicholas Velotti searched the vehicle in which § 87(2)(b) [REDACTED] was an occupant.	[REDACTED]
D.POM Adam Gledhill	Abuse: Police Officer Adam Gledhill searched the vehicle in which § 87(2)(b) [REDACTED] was an occupant.	[REDACTED]
E.POM Jay Poggi	Abuse: Police Officer Jay Poggi searched the vehicle in which § 87(2)(b) [REDACTED] was an occupant.	[REDACTED]
F.POM Michael McCarthy	Discourtesy: Police Officer Michael McCarthy spoke discourteously to § 87(2)(b) [REDACTED]	[REDACTED]
G.POM Nicholas Velotti	Discourtesy: Police Officer Nicholas Velotti spoke discourteously to § 87(2)(b) [REDACTED]	[REDACTED]
H.POM Nicholas Velotti	Force: Police Officer Nicholas Velotti used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
I.POM Nicholas Velotti	Abuse: Police Officer Nicholas Velotti threatened to arrest § 87(2)(b) [REDACTED]	[REDACTED]

Case Summary

On August 13, 2019, § 87(2)(b) filed the following complaint with the CCRB via telephone.

On March 23, 2019, at approximately 8:30 p.m., § 87(2)(b) and the father of her children, § 87(2)(b) were parked on the corner of § 87(2)(b) in Queens. Police Officers Nicholas Velotti and Michael McCarthy of the 101st Precinct, approached the vehicle and asked § 87(2)(b) and § 87(2)(b) to exit the vehicle while pointing guns at their faces (**Allegations A and B: Force**, § 87(2)(g)). § 87(2)(b) was immediately arrested. PO Velotti, PO Adam Gledhill, and PO Jay Poggi of the 101st Precinct, searched the vehicle (**Allegations C, D, and E Abuse of Authority**, § 87(2)(g)). PO McCarthy said “back the fuck up” to § 87(2)(b) (**Allegation F: Discourtesy**, § 87(2)(g)). PO Velotti said “get the fuck away from the car,” to § 87(2)(b) (**Allegation G: Discourtesy**, § 87(2)(g)) while pulling § 87(2)(b) by her jacket and causing § 87(2)(b) to stumble (**Allegation H: Force**, § 87(2)(g)) and stated, “if you move one more time I am going to arrest you” (**Allegations I: Abuse of Authority**, § 87(2)(g)).

§ 87(2)(b) was arrested on 18 counts involving criminal possession of narcotics and firearms, related to a search warrant executed by the Queens South Narcotics Unit on February 28, 2019, in which an I-Card was generated for § 87(2)(b) (**Board Reviews 01, 02, and 13**). § 87(2)(b) was not arrested or issued a summons. Body-worn camera footage (BWC) captured the alleged incident, however, did not capture PO Velotti and PO McCarthy’s initial approach of the vehicle or the handcuffing of § 87(2)(b). § 87(4-b), § 87(2)(g)

Findings and Recommendations

Allegation (A) Force: Police Officer Michael McCarthy pointed his gun at § 87(2)(b)

Allegation (B) Force: Police Officer Nicholas Velotti pointed his gun at § 87(2)(b)

Allegation (C) Abuse of Authority: Police Officer Nicholas Velotti searched the vehicle in which § 87(2)(b) was an occupant.

Allegation (D) Abuse of Authority: Police Officer Adam Gledhill searched the vehicle in which § 87(2)(b) was an occupant.

Allegation (E) Abuse of Authority: Police Officer Jay Poggi searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that on March 23, 2019, at approximately 8:30 p.m., near the corner of § 87(2)(b) in Queens, PO Velotti and PO McCarthy approached § 87(2)(b) and § 87(2)(b) after identifying § 87(2)(b) in a vehicle registered to him (**Board Review 34**). PO Velotti and PO McCarthy effected the arrest of § 87(2)(b) who had an open I-Card with the Queens South Narcotics Unit for possession of a machine gun (**Board Review 13**). PO Velotti, PO Gledhill, and PO Poggi performed a search of the vehicle registered to § 87(2)(b) for weapons while on scene post-arrest (**Board Review 36**).

§ 87(2)(b) stated that an unmarked car pulled in front of them and PO McCarthy approached the passenger’s side of § 87(2)(b)’s vehicle and asked her and § 87(2)(b) to exit the vehicle. § 87(2)(b) exited the vehicle and PO McCarthy handcuffed § 87(2)(b) and immediately seated him in the unmarked car. § 87(2)(b) exited the vehicle on her own. Several other officers arrived and the vehicle was searched by multiple officers. § 87(2)(b) did not make mention of any guns being pointed in her direction during the stop (**Board Review 15**).

§ 87(2)(b) stated that two officers approached the vehicle with guns pointed at their faces, while yelling. PO McCarthy and PO Velotti then grabbed § 87(2)(b) and himself out of the vehicle and holstered their guns. § 87(2)(b) was patted down, handcuffed and escorted to an unmarked RMP (**Board Review 16**).

PO McCarthy stated that he identified a vehicle parked on § 87(2)(b) which matched a description communicated to the anticrime team as § 87(2)(b)s. PO McCarthy did not recall who or how he was provided with the vehicle description, but believed the information contained a license plate number. PO McCarthy recalled reading § 87(2)(b)s wanted flyer stating that § 87(2)(b) was armed and dangerous and an I-Card related to a previously executed warrant that the Narcotics Unit had executed at § 87(2)(b)s residence yielding multiple firearms and narcotics. Upon approach, PO McCarthy saw that the male seated in what he believed was the driver's seat, but could not recall, looked like the male on the wanted poster for § 87(2)(b) PO McCarthy asked § 87(2)(b) to step out of the vehicle and handcuffed § 87(2)(b) without incident. PO McCarthy did not recall if the vehicle was searched while on scene but stated that the vehicle was seized according to arrest protocol and brought back to the 101st Precinct (**Board Review 17**).

PO Velotti stated that PO McCarthy identified the vehicle as § 87(2)(b)s before they stopped § 87(2)(b) inside of his vehicle, however PO McCarthy did not share how he knew the vehicle belonged to § 87(2)(b) PO Velotti stated he approached § 87(2)(b)s vehicle and told § 87(2)(b) that he was wanted and under arrest. PO Velotti stated that he and PO McCarthy did not draw their firearms upon approaching the vehicle. § 87(2)(b) then stepped out of the vehicle and complied with the arrest without incident. PO Velotti stated he performed a limited search of the vehicle for firearms because the vehicle was being taken back to the 101st Precinct for an inventory search but did not recall specifically where he searched (**Board Review 18**).

NYPD warrant audit information indicated that PO McCarthy ran a name search for § 87(2)(b) and PO Velotti ran a plate number search for § 87(2)(b)s vehicle on March 22, 2019. Lt. Padovani ran another plate number search on March 23, 2019 (**Board Review 14**).

PO Poggi stated that he responded to a call for an additional unit at a vehicle stop. When he arrived, § 87(2)(b) was already in handcuffs. PO Poggi did not recognize § 87(2)(b) but another member of the anti-crime team did. PO Poggi stated that the Narcotics Unit had recently informed the 101st Precinct Anticrime team that they executed a search warrant of § 87(2)(b)s apartment where weapons were seized. PO Poggi performed a limited search (front seats, cupholders, back seats) of the vehicle's grabbable areas for weapons (**Board Review 19**). PO Gledhill stated that he performed a brief search of the back seat of the vehicle (**Board Review 20**). PO Poggi (01:50-03:11) (**Board Review 07**) and PO Gledhill's (02:39-03:37) (**Board Review 06**) BWC documented their involvement in searching the vehicle.

PO McCarthy's BWC footage from 00:00 through 01:20 minute mark of the player, captured § 87(2)(b) exit from the front driver's seat of the vehicle and PO Velotti follow her to the back of the vehicle and was not seen pointing a gun. § 87(2)(b) was already handcuffed and calmly standing with PO McCarthy. There were no visible pointed guns, complaints of guns being pointed, or any behavior suggestive from either party that guns had been drawn or pointed (**Board Review 03**).

§ 87(2)(b)

Patrol Guide Procedure 221-01 states, the decision to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present. Firearms should be holstered once it is determined that the threat is no longer present. Additionally, any use of force must be reasonable under the circumstances (**Board Review 26**).

The NY Court of Appeals held that where police have validly arrested an occupant of an automobile, and they have reason to believe that the car may contain evidence related to the crime for which the occupant was arrested or that a weapon may be discovered they may contemporaneously search the passenger compartment, including any containers found therein, **People v. Belton, 55 N.Y.2d. 49** (**Board Review 40**).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation (F) Discourtesy: Police Officer Michael McCarthy spoke discourteously to § 87(2)(b)

Allegation (G) Discourtesy: Police Officer Nicholas Velotti spoke discourteously to § 87(2)(b)

Allegation (H) Force: Police Officer Nicholas Velotti used physical force against § 87(2)(b)

Allegation (I) Abuse of Authority: Police Officer Nicholas Velotti threatened to arrest § 87(2)(b)

§ 87(2)(b) testified that while the officers were searching the vehicle, she walked by one of the officers and stated that her mail was in the front area of the vehicle. PO McCarthy told § 87(2)(b) “back the fuck up.” § 87(2)(b) explained that another officer was going to pass her mail to her. Then Lt. Padovani approached her, and asked if § 87(2)(b) had hurt her, had done anything to her, and asked who she was. § 87(2)(b) stated that she was not saying anything to them and proceeded to use her cell phone to call her daughter. § 87(2)(b) then approached the vehicle a second time and asked if she could get her mail because she was going to leave. PO Velotti said, “Get the fuck away from the car”, while standing behind § 87(2)(b) and took his right hand and pulled the back of her jacket causing § 87(2)(b) to stumble while stating, “if you move one more time I am going to arrest you.” PO Velotti then told Lt. Padovani to hold § 87(2)(b) and make sure she did not move. § 87(2)(b) asked what they would arrest her for and explained that she only wanted her mail. § 87(2)(b) did not complain of any injuries while on scene but brought herself to the hospital on the same night (**Board Review 15**).

§ 87(2)(b)

§ 87(2)(b) did not witness the alleged interaction (**Board Review 16**).

PO Velotti’s BWC, beginning at 01:07 minute mark of the player, captured PO Velotti ask § 87(2)(b) to stand in one area behind the vehicle and to stop moving, which § 87(2)(b) did while remaining on the phone. At 02:15, § 87(2)(b) approached the back-passenger side door and PO Velotti asked § 87(2)(b) to stop moving. At 02:19, PO Velotti began to search the front driver’s side of the vehicle. Shortly thereafter, PO Velotti walked to his unmarked car while Lt. Padovani remained with the vehicle and § 87(2)(b). At 02:54, PO Velotti returned to the open driver’s side door of the vehicle. § 87(2)(b) stepped within 1-foot of PO Velotti and asked to get her mail. PO Velotti told her to wait 1-minute. § 87(2)(b) then raised her voice and repeatedly asked why they

were in her car without a warrant. PO McCarthy told § 87(2)(b) to step away from the vehicle, which she did, and PO Velotti resumed the search of the vehicle. At 05:13, Lt. Padovani told the officers to bring the vehicle back to the precinct. § 87(2)(b) then stated that the vehicle was hers. Lt. Padovani and PO Velotti explained that a license plate search showed that the vehicle was registered to § 87(2)(b). § 87(2)(b) said that they could not take her car. From 06:12 - 06:19 minutes, § 87(2)(b) walked into the open driver's side door of the vehicle. PO Velotti asked her what she was doing and with his right hand grabbed the left back shoulder of § 87(2)(b)'s jacket and pulled her from the vehicle, causing her to take two steps backwards from the vehicle as she continued to ask for her mail. PO Velotti said, "I'm giving you one more warning or you are going to be in handcuffs." BWC did not capture either PO McCarthy or PO Velotti use the alleged discourteous language (**Board Review 04**).

PO Velotti stated he asked § 87(2)(b) calmly approximately five times to step back from the vehicle. PO Velotti stated that he could have arrested § 87(2)(b) for disorderly conduct or obstruction of governmental administration for non-compliance. PO Velotti stated that he may have pushed her arm out of the vehicle while telling her to stand back from the car but did not use force against § 87(2)(b). PO Velotti stated that he did not make any discourteous statements and did not recall PO McCarthy do so either (**Board Review 18**).

PO McCarthy did not recall saying, "back the fuck up", to § 87(2)(b) and did not hear any other officer say, "back the fuck up", or curse at § 87(2)(b). PO McCarthy did not recall seeing any officer make physical contact with § 87(2)(b). PO McCarthy did not hear any officer say, "get the fuck away from the car", to § 87(2)(b) (**Board Review 17**). PO Poggi, PO Gledhill, and Lt. Padovani's statements mirrored PO McCarthy's (**Board Review 23**).

Patrol Guide Procedure 221-01 states, officers are to take action in order to stabilize a situation and reduce the immediacy of the threat with the goal to gain voluntary compliance of the subject, when appropriate and consistent with personal safety. Any use of force must be reasonable under the circumstances (**Board Review 26**).

According to **New York Penal Law Section 195.05**, a person is guilty of obstructing governmental administration when he intentionally obstructs the administration of law or other governmental function or by means of physical force or interference (**Board Review 28**).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]

§ 87(2)(b)

- PO McCarthy has been a member-of-service for nine years and has been subject in 15 CCRB complaints and 29 allegations, of which two were substantiated.
 - 201501145, involved substantiated allegations of threat of force and discourtesy against PO McCarthy. The Board recommended formalized retraining, which the NYPD imposed. PO McCarthy's CCRB history does not reflect any patterns pertinent to this investigation.
- PO Velotti has been a member-of-service for 10 years and has been a subject in four CCRB complaints and five allegations, none of which were substantiated. PO Velotti's CCRB history does not reflect any apparent pattern pertinent to this investigation.
- PO Gledhill has been a member-of-service for seven years and has been a subject in one CCRB complaint and one allegation, which was not substantiated. PO Gledhill's CCRB history does not reflect any apparent pattern pertinent to this investigation.
- PO Poggi has been a member-of-service for eight years and has been a subject in four CCRB complaints and 15 allegations, which were not substantiated. PO Poggi's CCRB history does not reflect any apparent pattern pertinent to this investigation.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.

§ 87(2)(b)

§ 87(2)(b)

(Board Review 38).

- As of April 29, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint **(Board Review 32).**

Squad No.: 1

Investigator: Inv. Frazier 12/3/20

Signature

Print Title & Name

Date

Squad Leader: Mgr. Joy Almeyda
Signature

Print Title & Name

1.13.21
Date